

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Wright Analyst: Kristina E. North Bill Number: AB 2439
Related Bills: See Legislative History Telephone: 845-6978 Introduced Date: February 24, 2000
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Administrative Procedure Act/Small Business Reform Act of 2000/State Agencies Adopting Regulations

SUMMARY

Under the Administrative Procedures Act (the Act) within the Government Code, this bill makes various changes to the laws governing regulatory procedures, including requiring each agency issuing regulations to establish a Small Business Advisory Council.

EFFECTIVE DATE

This bill would be effective January 1, 2001.

LEGISLATIVE HISTORY

AB 1822 (Frusetta - 2000) also would make various changes to the laws governing regulatory procedures.

SPECIFIC FINDINGS

Current state law allows a state agency to adopt, amend or repeal regulations (every rule, regulation, order or standard of general application), and provides a procedure by which the agency may adopt, amend or repeal the regulation, including Office of Administrative Law (OAL) review.

Current state law requires a state agency to draft a regulation in plain, straightforward language, avoiding technical terms, and using a coherent, easily readable style. If the regulation affects small business, the agency is generally required to draft it in "plain English" that can be interpreted by a person who has no more than an eighth grade level of proficiency in English. A noncontrolling, plain English summary of a regulation is allowed if the regulation is so technical in nature that it cannot be drafted in plain English.

Current state law requires a state agency to assess whether and to what extent a proposed regulatory action would affect the creation or elimination of jobs or businesses and the expansion of businesses currently doing business within the state. The information required from state agencies may come from existing state publications.

Current state tax law requires that, in areas where federal law and state law are the same, federal income tax regulations shall be applied to the extent they do not conflict with state law or state regulations.

Board Position:

<u> </u> S	<u> </u> NA	<u> </u> NP
<u> </u> SA	<u> </u> O	<u> </u> NAR
<u> </u> N	<u> </u> OUA	<u> </u> X PENDING

Department Director

Date

Alan Hunter for GHG

4/5/00

Current state law requires within the Trade and Commerce Agency that the California Small Business Advocate be established, appointed by and serving at the pleasure of the Governor. The Government Code sections provide definitions, and the duties and functions of the Advocate. It requires state agencies to provide the Advocate reports, documents and other information deemed necessary by the Advocate.

This bill would:

- ☐ require each state agency secretary or director issuing regulations affecting small businesses to appoint a Small Business Advisory Council. The council must advise the agency on issues affecting small businesses, including the impact of proposed regulations.
- ☐ require a state agency to:
 - 1) accept responses from affected businesses and industry by facsimile and electronic mail;
 - 2) designate a contact person who is knowledgeable about the regulations and their applicability and able to respond to questions and comments directly, without referring the affected party to another point of contact;
 - 3) designate a backup contact person with the same qualifications as the contact person; and
 - 4) post on its website (if available) the notice of proposed action, initial statement of reasons for the proposed regulatory action, text of proposed regulation, economic and fiscal impact statements, final statement of reasons, a dated notice of intent if the agency wishes to discontinue the proposed action, any OAL decisions, the date the regulation is filed with the Secretary of State, the effective date of the regulation, and a statement that a business or person submitting a comment has the right to request a copy of the final statement of reasons.
- ☐ require a state agency to separately identify and respond to any comments made by the Trade and Commerce Agency, the failure of which will be grounds for delaying the approval of the regulatory action.
- ☐ require a state agency that is discontinuing a proposed regulatory action to notify OAL of its intent to discontinue and require OAL to post on its website the discontinued regulatory action and the reasons for that discontinuance.
- ☐ clarify that all references to "days" mean "business" days.
- ☐ require OAL to establish an identification numbering system for each regulation, proposed regulation, proposed amendment or repeal of a regulation sufficient for a member of the public to identify and track the action with the OAL and state agency proposing the action.

- ☐ authorize OAL, on its own authority and without a request from the state agency, to decline to publish a notice of proposed action if the action is making a change in the regulation that OAL deems is a change without a regulatory effect (i.e., a "Section 100" change).
- ☐ authorize OAL to extend the public comment period if the OAL determines that the agency has failed to promptly respond to inquiries to such an extent that a meaningful opportunity to comment has been denied to the public.
- ☐ authorize OAL to extend the public comment period for up to 90 additional business days due to the complexity of the regulations.
- ☐ require OAL to establish procedures requiring state agencies to draft all regulations in plain English, as described and enforced by the OAL.
- ☐ require OAL weekly to post on its website the California Regulatory Notice Register.
- ☐ authorize OAL to extend the period of time that an emergency regulation remains in effect or to extend the public comment period in specified circumstances.

This bill also establishes the Director of the Office of Small Business Advocate, appointed by the Governor. This bill would list the Director's duties and functions, and require each state agency to furnish whatever reports, documents, and information that the Director deems necessary.

This bill also makes a number of technical changes to the laws governing regulatory procedures.

Implementation Considerations

While this bill requires each state agency secretary or director issuing regulations affecting small businesses to appoint a Small Business Advisory Council, it does not specify guidelines for the makeup of the council itself, consideration of advice provided by the council, term limits, etc.

Further, it does not appear that an individual state agency Small Business Advisory Council would have any accountability to or coordination with the California Small Business Advocate. It is unclear if the author intended complete autonomy for each state agency's Small Business Advisory Council.

Because of the complexity of the regulatory actions taken by this department, an attorney serves as the knowledgeable contact person for each regulatory action. This bill would require a backup contact person who is knowledgeable about the regulations and their applicability and that is able to respond to questions and comments directly, without referring the affected party to another point of contact. It is unclear if the author intended that the contact person or backup be available at all times or if the agency could respond to any requests within a reasonable amount of time. This requirement may necessitate new attorney positions to provide as backup.

Technical Consideration

Under Government Code sections 8850 through 8850.6, current state law requires that the California Small Business Advocate be established in the Trade and Commerce Agency, specifies duties, and defines terms. This bill, under Government Code sections 15334.5 through 15334.8, creates the Office of Small Business Advocate in the Trade and Commerce Agency. Thus, this bill would be in conflict with current law as it relates to the Advocate. The author may wish to consider repealing the current law so that this bill would carry out his intent.

FISCAL IMPACT

Departmental Costs

Departmental costs are difficult to determine without resolution of the implementation consideration pertaining the contact person backup. The projected costs could range from insignificant to moderate.

Tax Revenue Estimate

This bill would not impact the department's collection of state income tax revenue.

BOARD POSITION

Pending.